

Affordable Housing Funds Policies and Procedures

City of Santa Ana
Housing Division
and
Housing Authority of the
City of Santa Ana



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PURPOSE

On June 20, 2017, the City Council for the City of Santa Ana directed staff to develop a policy to allocate affordable housing development funds and criteria for selection of projects. These policies and procedures have been developed to guide how affordable housing funds and land assets available to the City of Santa Ana are allocated, committed, loaned and monitored for multi-family affordable housing development in the City.

INTENT

The intent of these policies and procedures is to provide a transparent, open and fair process for developers, businesses, non-profit organizations, individuals and other entities interested in the allocation of scarce affordable housing funds and land assets available to the City for affordable housing development.

Definitions

Available Funds: The total amount of Inclusionary Housing Funds, HOME Investment Partnerships Program, Community Development Block Grant Program, Project-Based Voucher Program, Low and Moderate Income Housing Asset Funds (Housing Successor Agency Funds) and/or any other funds received by the City of Santa Ana for housing purposes as published on a quarterly basis in the Housing Division Quarterly Report. Inclusionary Housing Fund In-Lieu Fee pending payments and any other funds that have not yet been received by the City shall not be considered Available Funds.

Affordability Restrictions: Covenants that shall run with the land and bind a property owner, its successors, its assignees and every successor in interest to a property that the property owner will make all subsidized rental units on the property available to extremely-low, very-low, low and/or moderate-income households at rents affordable to such households for at least fifty-five (55) years unless superseded by the regulations for an applicable program fund.

City: The City of Santa Ana when using the Inclusionary Housing Fund, HOME Investment Partnerships Program, and/or Community Development Block Grant Program funds; or the Housing Authority of the City of Santa Ana when using the Project-Based Voucher Program and/or Low and Moderate Income Housing Asset Fund (Housing Successor Agency Fund).

Community Housing Development Organization (CHDO): A private nonprofit housing development corporation which meets a series of HUD qualifications prescribed in the HOME Program regulations, including the requirement that it is duly organized to provide decent housing that is affordable to low- and moderate-income persons; maintains at least one-third of its governing board's membership for residents of low-income neighborhoods, other low-income residents, or elected representatives of low-income neighborhood organizations; and, provides a formal process for low-income program beneficiaries to advise the organization in its decisions regarding the design, siting, development, and management of affordable housing.

Community Based Development Organization (CBDO): A Housing Development Corporation which meets the requirements of the CDBG Program regulations as defined in 24 CFR 570.204(a)(2)(c)(1), as amended from time to time.

Congregate Housing: A multi-family residential facility with shared kitchen facilities, deed-restricted or restricted by an agreement approved by the City for occupancy by low or moderate income households, designed for occupancy for periods of six months or longer, providing services which may include meals, housekeeping and personal care assistance as well as common areas for residents of the facility.

Deed of Trust: Legal title in the property that is transferred to the City, which holds it as security for a loan provided by the City.

Development of Affordable Housing: The process of creating affordable housing through acquisition and/or rehabilitation of eligible properties for rental or transitional housing;

acquisition and conversion of non-residential property to multifamily rental housing units; and/or new construction of housing units for rental housing.

Extremely Low-Income Household: Households with incomes that do not exceed 30% of the Orange County area median income, adjusted for household size, as published by the U.S. Department of Housing and Urban Development (HUD) from time to time.

Fair Market Rents: Maximum rents as published by HUD for the Housing Choice Voucher Program for Orange County, adjusted for unit size.

Grant: Transfer of funds for purposes of financing the development of affordable housing, on the condition that grantee remains in full compliance with the Regulatory Agreement. Unlike a loan, the grant only becomes due and payable in the event that grantee is in default of the Regulatory Agreement.

Nonprofit Housing Development Corporation (HDC): A private, nonprofit corporation with proven capacity to develop, own and operate housing, and which has a valid 501(c)(3) or (4) designation from the IRS.

Limited Equity Cooperative: A form of ownership whereby the residents form a cooperative corporation which owns and manages the property, and where the return on residents' original equity is limited to no more than 10%, as defined in the California Health and Safety Code Section 33007.5.

Loan Agreement: A loan of program funds for purposes of developing affordable housing with a Promissory Note secured by a Deed of Trust and Affordability Restrictions on the property.

Qualified Developer: A non-profit or for-profit affordable housing developer with proven capacity to develop, own and operate affordable housing.

Low-Income Household: Households with incomes that do not exceed 80% of Orange County area median income, adjusted for household size, as published by the U.S. Department of Housing and Urban Development (HUD) from time to time.

Maximum Affordable Rent: A rent which does not exceed thirty percent (30%) of the maximum income level of the income group being served (see "Low and Moderate Income Households"), adjusted for unit size and utility costs.

For Low and Moderate Income Housing Asset Fund: the Maximum Affordable Rent for households with incomes that do not exceed 120% of the area median income for Orange County shall be 30% of 110% of such median income.

Moderate-Income Household: Households with incomes that do not exceed 120% of the Orange County area median income, adjusted for household size, as published by the U.S. Department of Housing and Urban Development (HUD) from time to time.

New Construction: The construction of new housing, including, but not limited to, assembly of factory-built modular housing, or conventional on-site construction.

Notice of Completion: Written notice issued by the owner of a project (or his or her agent) to notify concerned parties that all work on the project has been completed.

Operating Reserve Account: An account established for the purpose of funding a deficit in the project's operation.

Permanent Loan: A long-term (maturity period of 55 years) mortgage loan. Permanent loan financing is obtained after completion of construction, usually to repay the short-term (non-permanent) construction loan.

Promissory Note: A "promise to pay" and evidence of an obligation of a borrower to the City for repayment of a Permanent Loan.

Rehabilitation: Correction of local code violations and removal of health and safety hazards; upgrading of housing units to decent, safe and sanitary conditions to comply with the Housing Quality Standards promulgated by HUD and with local standards; repair or replacement of major building systems or components in danger of failure; and alterations, additions and improvements to expand the number of affordable units, or needed to improve the basic livability, energy efficiency, accessibility for the disabled, or security of the property, and to reduce overcrowding.

Replacement Reserve Account: An account established for the purpose of funding major repairs or replacement of capital components of a building which reach the end of their economic life and require replacement.

Residual Receipts: The gross receipts from the property, less actual costs of operation, administration, maintenance, taxes, insurance, utilities, management, approved replacement and operating reserves, payments of principal and interest on loans senior to the City loan(s), and required debt service coverage. The amount of Residual Receipts shall be calculated based on the actual income and expenses set forth in the Annual Operating Budget required under the Regulatory Agreement or recorded Affordability Covenants, as approved by the City.

Transitional Housing: A type of supportive housing used to facilitate the movement of homeless individuals and families to permanent housing. Typically, transitional housing is housing in which homeless people live for up to 24 months and receive supportive services that enable them to live more independently. The supportive services may be provided by the organization managing the housing or coordinated by them and provided by other public or private social service agencies.

Very Low-Income Household: Households with incomes that do not exceed 50% of the Orange County area median income, adjusted for household size, as published by the U.S. Department of Housing and Urban Development (HUD) from time to time.

I. INTRODUCTION

The City of Santa Ana provides financial assistance to support the acquisition, rehabilitation, and new construction of properties to preserve and increase affordable housing opportunities for lower income households through the following Programs:

- Low and Moderate Income Housing Asset Fund (*Housing Successor Agency Fund*) including land assets owned by the Housing Successor Agency
- Inclusionary Housing Fund
- HOME Investment Partnerships Program (HOME)
- Community Development Block Grant Program (CDBG)
- Project-Based Voucher Program (PBV)

Under these Funds and Programs (“Programs”), the City provides deferred payment loans and/or grants to bridge the financial gap between available resources, including the borrower's/grantee's equity and private financing, and the costs of developing affordable multi-family housing. The Affordable Housing Funds Policies and Procedures (“Policies and Procedures”) provides an overview of the types and terms of loans which are available, proposal requirements, review procedures, selection criteria, loan commitment and closing procedures, and project monitoring and reporting requirements of these varied Programs within one comprehensive source of reference. [*Throughout this document, loans and grants may be referred to collectively as “loans” except when the terms are unique to a loan or to a grant.*]

These requirements are minimum requirements for participation in City Programs and are subject to approval by City Council. Meeting these requirements does not guarantee participation in any Program. The City reserves the right to require additional qualifications for individual projects. The City reserves the right to reject any and all proposals.

At a minimum these Policies and Procedures will be compared and reviewed to the City's progress to achieve the goals in the Housing Element each year. If it is determined that the City is not making adequate progress to achieve the goals of the Housing Element, staff will review these Policies and Procedures to determine whether they should be amended to more effectively achieve the goals of the Housing Element.

These Programs are administered by the Housing Division of the City of Santa Ana (under the direct supervision of the Housing Division Manager, the direction of the Executive Director of Community Development, and the general supervision of the City Manager).

These Policies and Procedures should be interpreted in conjunction with Federal, State, and City statutes and regulations governing the use of these funds. In the event of a conflict between these Policies and Procedures and such statutes and regulations, the requirements of those statutes and regulations shall prevail. All projects must comply with all applicable statutes and regulations, which may include federal requirements contained in 24 CFR 92, 570, 982, and 983, including, but not limited to, environmental reviews, labor and wage requirements, debarred contractors, lead-based paint and equal opportunity. Leveraging of City dollars (to the extent possible) with outside funding sources will continue to be a priority to preserve and increase affordable housing opportunities for low income households.

II. TYPES OF LOANS AND GRANTS

Program funds may be used for development loans for the following eligible purposes:

- (1) The purchase of existing multi-family or other buildings for rent or sale to low- and very low-income households and for the development of congregate housing for rent to low- and very low-income persons with special needs (e.g. homeless individuals and families, elderly, persons with a disability). Except for congregate housing, existing buildings shall consist of four or more units, unless the Housing Division Manager finds that a substantial public benefit will be provided by a project consisting of less than 4 units.
- (2) The purchase or lease of land and buildings for new construction or rehabilitation of housing that may utilize available State and Federal housing assistance programs such as Low-Income Housing Tax Credits, the Section 202 Supportive Housing for the Elderly Program, tax-exempt bond financing, Section 811 Supportive Housing Program, and/or other available State and Federal programs.
- (3) The development of limited-equity housing cooperatives through either conversion or new construction.
- (4) The provision of interim loan funds for any of the above purposes prior to the funding of a public or private loan. Eligible development costs for the above uses include, but are not necessarily limited to:
 - a. site acquisition and preparation;
 - b. rehabilitation of dwelling units, common areas and related structures;
 - c. new construction;
 - d. carrying charges and financing fees;
 - e. architectural, legal, and organizational fees;
 - f. temporary or permanent tenant relocation costs; and
 - g. developer fees consistent with the policies described in Section IV below.

III. PROPOSAL SUBMITTAL AND REVIEW PROCEDURES

Proposal Submittal

All Proposals for Program funds shall be submitted to the Housing Division and shall be reviewed and recommended for approval to the Community Redevelopment and Housing Commission for its review and recommendation for City Council or Housing Authority approval through a transparent, open and competitive selection and review process as established in this section.

The competitive selection process will begin with a determination by Housing Division staff that the City has sufficient Available Funds to develop one or more affordable housing projects. If the City has sufficient Available Funds to develop one or more projects, the Housing Division, upon City Council approval, will issue a Request for Proposals (RFP), Request for Qualifications (RFQ) or Notice of Funding Availability (NOFA), collectively referred to as the “RFP Process” for a certain amount of Available Funds. The RFP Process will be open (“Open RFP Process”) and provide sufficient time for applicants to identify an eligible site and complete and submit a proposal in response to the RFP announcement. It will also align with annual funding cycles through the Low-Income Housing Tax Credit Program. The RFP Process will be open for at least one year with four (4) quarterly deadlines to submit a proposal scheduled throughout the year.

The RFP Process will be announced through notices to the following parties:

- Interested Developers and Nonprofit Organizations on the Housing Division’s RFP Process Database
 - Developers and Nonprofit Organizations interested in being added to the RFP Process Database can do so by contacting the City’s Housing Division
- Other affordable housing membership association resources (e.g. Southern California Association of Nonprofit Housing, Kennedy Commission, 2-1-1 OC)
- Public Notice in the local newspaper
- Published on www.Planetbids.com

Proposals must meet the minimum requirements outlined in the RFP Process to ensure compliance with available funding sources’ regulations and requirements. Proposals will be received from qualified firms for projects consistent with the requirements of the Available Fund(s) issued through the RFP Process. Proposals shall not exceed the amount of the City’s total Available Funds as published on a quarterly basis in the Housing Division Quarterly Report.

A Qualified Developer (an “Applicant”) shall complete and submit to the Housing Division the Proposal for Program funds and prepare all required attachments and exhibits, including, but not limited to, the project proforma, budget, sources and uses, project management plan, tenant selection and marketing plan, relocation plan (if applicable), signed purchase agreement and escrow instructions, preliminary title report, and limited partnership documents (if applicable).

Proposal Review

After each deadline for the Open RFP Process, the Housing Division staff shall review the Proposal to determine that the minimum Program and RFP Process requirements are met (minimum threshold review). Proposals that do not meet the minimum threshold review will be considered non-responsive. If the Proposal meets the minimum threshold review, the Housing Division will form a Review Panel. The Review Panel for the RFP Process will consist of at least one employee from the City's Public Works Agency, Planning and Building Agency, and Community Development Agency and one outside agency or government-entity. If an employee is not available in one department, a second employee may be requested from one of the other two departments so long as there are at least two of the three City Agencies represented on the Review Panel.

Using the scoring and selection criteria provided in the RFP Process and provided below, the Review Panel shall determine whether the proposal is recommended for a pre-loan commitment, with or without conditions. Including the scoring and selection criteria, the Review Panel shall review the design of the proposed project for appropriateness for the proposed target group, compatibility with surrounding uses, cost effectiveness of construction, and appropriateness of the design and construction for low maintenance and long term durability. Proposed projects must receive a minimum threshold score of 75 points to move forward with the proposal review process. If the Review Panel determines, in its discretion, that the Proposal may be recommended for approval, the Housing Division shall request an underwriting and subsidy layering review by a real estate advisor selected by the City. The real estate advisor shall confirm the underwriting for the Project, the financial gap, and other programmatic requirements related to the funding sources. If the Review Panel determines that the Proposal will not be recommended for approval (i.e. the Proposal does not meet the minimum threshold score of 75 points), the Developer will be notified in writing of the decision and the result will be published in the Housing Division Quarterly Report.

City Council Initiated Proposal Review

A Developer may submit a request for a sole source award of funding directly to the City Council (the request cannot exceed the amount of the City's total Available Funds as published on a quarterly basis in the Housing Division Quarterly Report). At least one Councilmember must then submit a written request to staff to review the Developer's proposal. After a written request has been received, staff will request a complete proposal from the Developer. After the proposal has met a minimum threshold review by staff, the project will undergo an underwriting and subsidy layering review analysis by a real estate advisor selected by the City, to be paid for by the Developer. After the analysis has been completed, staff will present the real estate advisor's analysis and the proposal to City Council for direction without any recommendation(s) from staff on funding or not funding the project. If City Council requests a second real estate analysis to be conducted, the City will pay for the second analysis, not the developer.

By-Right Funding for Achieving City Goals and Objectives

If at any time a developer proposes a project that is located in a zoning district permitting development of residential uses “by-right” and such approvals do not require any discretionary actions by the City, the developer may submit an application for by-right funding of extremely low-income affordable housing units. Staff may then form a Review Panel to consider the developer’s application for by-right funding as quickly as possible using the scoring and selection criteria from the Open RFP Process. This policy will expedite consideration of the developer’s application for by-right funding. Only units serving households at 30% Area Median Income and below may qualify for by-right funding under this application process. The maximum per unit subsidy shall not exceed the maximum limits established by HUD for the HOME Program at the time of submission of the application for by-right funding by the developer. Applications for by-right funding may only request Inclusionary Housing Funds from the City under the above-described process and the requested amount shall not exceed the amount of the City’s total Available Funds as published quarterly in the Housing Division Quarterly Report. However, funding is subject to the availability of actual Inclusionary Housing Funds. Additionally, the City reserves the right to amend these policies at any time, which could affect the availability of such funding, or to deny funding for any project that the City determines in its sole discretion does not align with the City’s goals and objectives for this program.

Three-Year Goals for By-Right Funding Proposals:

The City of Santa Ana has established the following Goals for the next three years, to be evaluated on an annual basis, for proposals submitted under this section. The Goals are linked to the Regional Housing Needs Assessment (RHNA) per the City’s Housing Element and based upon what affordable housing development projects that the City has in the pipeline for development and estimates/goals for Year 3:

Year	# of Extremely Low-Income Units at 30% AMI	# of Very Low-Income Units at 50% AMI	# of Low-Income Units at 80% AMI
1	54	111	9
2	54	33	38
3	115	82	34
TOTAL	223	226	81

Competitive Selection Criteria

In selecting among competing project proposals, consideration shall be given to projects that meet the following General Principles:

- Significantly increase affordable housing opportunities for large families (three- and four-bedroom units).
- Benefit a higher percentage of units for extremely low-income households with deeper affordability.
- Are cost effective with low operating costs (green building techniques).
- Increase affordable housing opportunities for special needs populations, including homeless individuals and families, persons with a disability, and seniors.
- Are located in areas currently underserved by affordable housing developments.

The following constitute the City’s general selection criteria, and may be modified from time to time to address practical requirements arising from a particular solicitation at the City’s discretion:

COMPETITIVE SELECTION CRITERIA	
1. LEVEL OF AFFORDABILITY AND TARGET POPULATION (Max. 25 Points)	ELIGIBLE POINTS
Project significantly increases affordable housing opportunities for large families (three- and four-bedroom units)	10
Project provides a higher percentage of units for extremely low-income households with deeper affordability	10
Project increases affordable housing opportunities for special needs populations including, but not limited to, homeless individuals and families, and persons with a disability	5
<i>Sub-total</i>	25
2. TIMELINESS TO BUILD NEW HOUSING (Max. 20 Points)	
Project has demonstrated site control	7
Project is zoned appropriately	5
Project does not have any other site-related issues	5
Project aligns with the City’s Housing Element, Strategic Plan, and/or 5-Year Consolidated Plan	3
<i>Sub-total</i>	20
3. PROPERTY MANAGEMENT EXPERIENCE AND SKILLS (Max. 15 Points)	
Project is energy efficient and incorporates green-building techniques	6
Applicant's ability to manage affordable rental units to ensure ongoing compliance with affordability requirements and long term financial solvency	3
Applicant's past experience in property management	3
Applicant's capacity and ability to quickly lease completed units	3
<i>Sub-total</i>	15
4. DEVELOPER EXPERIENCE AND SKILLS (Max. 15 Points)	
Applicant's capacity and ability to obtain additional funding	4
Applicant's capacity and ability to obtain entitlements	4
Applicant's overall past and projected effectiveness to provide affordable housing	4
Applicant's past and projected effectiveness to manage the construction process and stay on schedule	3
<i>Sub-total</i>	15
5. LEVERAGING OF CITY FUNDS (Max. 5 Points)	
Applicant's potential or capacity to obtain additional financing	5
<i>Sub-total</i>	5

6. ANTICIPATED CASH FLOWS (Max. 15 Points)	
Project's proposed development costs are reasonable and comparable	3
Project's proposed rents are realistic	3
Project's operating costs are realistic and reasonable	3
Project has sufficient operating and replacement reserves	3
Project is projecting a positive cash flow through affordability period	3
<i>Sub-total</i>	15
7. PROJECT LOCATION (Max. 5 Points)	
Project is located in an area currently underserved by affordable housing	5
<i>Sub-total</i>	5
TOTAL ELIGIBLE POINTS	100

Developer Input on In-Lieu Fee Payments to the Inclusionary Housing Fund

Under Section 41-1904(c)(3) of the Housing Opportunity Ordinance, a “Developer may provide input regarding what project the in lieu fees should be applied towards, but such input shall not be dispositive. The in-lieu fees collected by the City are City funds over which the City has complete and absolute discretion”. If a Developer chooses to provide input on the allocation of their in-lieu fees, input must be submitted in writing within no more than 90 calendar days from the date payment of the in-lieu fees are deposited with the City. The Developer’s request will be worth up to five (5) bonus points awarded to the applicant within the RFP Process through the Competitive Selection Criteria provided above. The bonus points do not guarantee that the project will be funded with the in-lieu fees paid by the Developer that provided the input.

Determination of Reasonable Costs and Financial Feasibility

A real estate advisor shall review the Applicant's estimates and projections of rents, expenses, reserves and development costs in accordance with industry-standard underwriting guidelines. The Applicant shall provide a proforma and background documentation on all costs for the analysis, as requested by the City. The City may recommend adjustments to cost and expense amounts as appropriate to conform to current market and industry standards. The total amount of the Program loan and all private loans shall not exceed the total development costs approved by the City.

The maximum allowable purchase price shall not exceed the appraised value as evidenced by an appraisal prepared by a California State Certified General Appraiser and approved by the Housing Division, which is dated not more than six (6) months prior to the date of the proposal. The appraisal may not determine property value based solely on sales of properties financed by public agencies.

The maximum affordable mortgage amount shall be calculated using the rent schedule proposed by the Applicant as approved by the City, the proposed interest rate and terms of the primary loan(s), and reasonable operating allowances and reserves, including a reserve to amortize a mortgage, as needed.

The requested City loan for a project shall not exceed the total amount of the gap between the maximum affordable mortgage amount available from non-City sources plus funds available from other sources of public subsidy, and the total development costs plus any on-going annuity necessary to maintain affordable rent levels as defined in the Proposal.

All assisted units must maintain rents that do not exceed the Maximum Affordable Rent, as defined in the Loan Documents, for the life of the loan in accordance with the terms of the loan or other recorded Covenants. Syndicated projects must be structured such that ownership can feasibly be acquired by the nonprofit General Partner at the end of the term of the limited partnership agreement, when appropriate. When determining the maximum City loan, the real estate advisor will review the rent schedule and annual cash flows to determine whether long-term affordability is maintained. In cases where a rent subsidy program is used and the mortgage is calculated on the basis of the subsidized rents, an "affordability reserve" may be required, where the amount of the reserve shall be sufficient to cover the difference between affordable rents and the subsidized rents.

Developer Fee

For new construction, acquisition and rehabilitation projects utilizing Low-Income Housing Tax Credits, the developer fee shall not exceed the maximum fee allowed by the California Tax Credit Allocation Committee. The Housing Division Manager may require the developer to defer a portion of their developer fee, based upon an analysis by the real estate advisor, to make the project feasible, reduce the amount of Program funds being requested for the project, or both.

Developer Capacity

Applicants must demonstrate the capacity to successfully develop the proposed project. The City shall evaluate capacity on the basis of the Applicant's track record in developing and managing affordable housing, or inclusion of development team members with a successful record in developing such housing. In addition, Applicants must demonstrate the financial and legal capacity to undertake the proposed project.

Clear Title

The Applicant shall have the responsibility to obtain clear title to the property. As soon as feasible, the Applicant will submit a preliminary title report for City review and written approval. Staff shall review the state of title, including the conditions, covenants, restrictions, and legal description of the property. In the case of title issues, the Applicant shall correct the state of title and remove all exceptions to the title not consented to by the City before the City closes the loan.

Senior Financing

The Applicant shall secure other resources such as equity from syndication proceeds, tax exempt financing, federal and state housing rental and development subsidies and available private financing to minimize the amount of the City loan. The Applicant will submit to the City the terms and conditions of all non-City financing as well as equity contributions for review. The

Applicant must submit projected cash flows for the term of the loan, showing the maximum possible increases (i.e. worst case scenario) in debt service per year, the projected rent and expense increases, the means of making up any deficits, and projected payments of Residual Receipts. The real estate advisor shall analyze the feasibility of the project to carry the loan(s), and if feasible will review the terms of the non-City financing.

The City may, at its sole discretion, calculate the mortgage amount at the terms and rates of available financing programs other than that proposed by the Borrower, if alternative terms and rates are available that would reduce the amount of City subsidy required, and would otherwise conform to the City/Agency requirements.

Management and Affirmative Marketing Plan

The Applicant shall prepare a Project Management Plan for City review and approval. The Plan shall describe the Applicant's policies and procedures concerning:

- (1) Affirmative marketing and tenant selection procedures, including proposal procedures, prioritization of Santa Ana residents and workers (see Local Preference section below) where possible; waiting lists, and lease agreements; and marketing efforts and tenant selection procedures that will be used to attract eligible persons from all racial, ethnic and gender groups, as well as persons living with disabilities, in the housing market area to the available housing opportunities. The Plan should describe the protocols for keeping records of affirmative marketing activities and for keeping records of requests (from applicants and existing tenants) for all units assisted with affordable housing funds;
- (2) Procedures for determining tenant eligibility and certifying incomes. The Plan should demonstrate sufficient outreach to disability-related service providers to ensure that accessible units are occupied to the extent possible by those households who need the accessibility features due to disability. The Plan should demonstrate that the Developer conducted sufficient outreach to persons that meet the qualifications identified in the Local Preference section below. An outreach plan and results from outreach efforts should be maintained by the developer and available to submit to the City upon request;
- (3) Management/tenant relations and assistance to tenant organizations, including the training and use of tenants to perform maintenance and management functions as appropriate;
- (4) Maintenance and repair services;
- (5) On-site management facilities;
- (6) Rent collection;
- (7) Records and reporting requirements;
- (8) Personnel and staffing;
- (9) Compliance with all tenant protection laws, including Building and Health and Safety Codes;
- (10) Fee schedule; and
- (11) Any other relevant issues requested by the City to be addressed.

No person shall on the grounds of race, marital status, sex, color, age, religion, national origin, ancestry, immigration status, physical disability, AIDS, sexual orientation, or any other protected class, be excluded from participating in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with these funds.

Local Preference

Local preference for Santa Ana residents and workers in tenant selection shall be a requirement of the City's Affordable Housing Funds and Programs. Local preference shall be a requirement of the HOME, CDBG, and PBV Programs *only if permitted by the federal government*.

In evaluating a loan request, staff shall evaluate a loan applicant's effectiveness in achieving the City's local preference goals and give priority to those loan applicants who administer their wait lists using sorting protocols which result in outcomes where households who live or work in Santa Ana are beneficiaries of City-funded affordable housing.

Subject to applicable tenant income limits and any preferences required by the laws of the United States or the State of California (including, but not limited to, laws and regulations governing nondiscrimination and preferences in housing occupancy), the Borrower shall give preference in leasing units in the following order of priority:

1. First priority shall be given to persons who have been permanently displaced or who face permanent displacement from housing in Santa Ana as a result of any of the following:
 - a. A redevelopment project undertaken pursuant to California's Community Redevelopment Law (Health & Safety Code Sections 33000, et seq.) -- applicable only to projects funded by the Low-Moderate Income Housing Asset Fund.
 - b. Ellis Act, owner-occupancy, or removal permit eviction;
 - c. Earthquake, fire, flood, or other natural disaster;
 - d. Cancellation of a Housing Choice Voucher HAP Contract by property owner; or
 - e. Governmental Action, such as Code Enforcement.

2. Second priority shall be given to persons who are either:
 - a. Residents of Santa Ana and/or
 - b. Working in Santa Ana at least 32 hours per week for at least the last 6 months.
 - c. Persons who seek to reside in Santa Ana as an accommodation to a mental or physical disability.

Regarding any "accessible units" that are required as part of a multifamily development, such accessible units should be first offered to existing occupants of the building (if applicable) who are not occupying an accessible unit and who have indicated a need for the features of an accessible unit. If no existing occupants of the building have indicated the need for the features of an accessible unit, or if the building is being leased for the initial occupancy, then such accessible units should first be offered to applicants who have indicated the need for the features of an accessible unit, inclusive of the preferences above. The application of preferences may not conflict with Section 504 of the Rehabilitation Act of 1973, 24 C.F.R. §100.202, and any other preemptive laws that may be enacted regarding fair housing for persons living with disabilities.

“Accessible units” refers to those units which were originally approved by the City specifically as accessible units and which provide specific features to address the needs of persons living with mobility impairments or persons living with sensory impairments.

Environmental Review

Project sites must be free from adverse environmental impacts or the proposed project must successfully mitigate these impacts. The City shall assess the environmental effects of each activity proposed to be carried out with City funding in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) and the California Environmental Quality Act (CEQA), as applicable. For projects subject to NEPA review, no loan funds (except for activities normally exempted from the environmental clearance requirements in 24 CFR Part 58.34) shall be released until the environmental review is completed, the notice of finding and environmental assessment results are published, and the 15-day public comment period expires.

Prevailing Wages

Any contract for construction (rehabilitation or new construction) of affordable housing with **12 or more units** assisted with HOME Program funds, **8 or more units** if the project is assisted with CDBG Program funds, or **9 or more units** if the project is assisted with PBV Program funds, must contain a provision requiring that not less than the prevailing wages paid in the locality, as determined by the Secretary of Labor pursuant to the Davis-Bacon Act, will be paid to all laborers and mechanics employed in the development of the project. Contractors and subcontractors must comply with regulations issued under this Act and pertaining to labor standards and HUD Handbook 1344.1.

Relocation

If necessary, the Applicant shall develop a plan for temporary relocation or permanent voluntary relocation, where necessary, for review by the City. The Relocation Plan shall be in accord with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the implementing regulations at 24 CFR Part 42, and the California Relocation Assistance Act, where applicable. There shall be no permanent involuntary tenant displacement. In cases where tenants will be voluntarily displaced, the Applicant must submit a copy of a letter to each tenant which details the tenant’s rights to relocation assistance. In the case of a tenant’s waiver of relocation payments, the Applicant must submit a letter signed by the tenant indicating the tenant’s knowing and voluntary waiver of any relocation assistance. In the absence of these items, the Applicant/“other displacing entity,” as that term is defined under applicable state or federal law will be responsible for paying the tenant the appropriate level of relocation assistance.

Contracting Requirements

All Applicants will be required to submit an affirmative action/equal employment opportunity plan indicating the methods that they will use to encourage the participation of certified Minority

Business Enterprise/Women Owned Business Enterprise (MBE/WBEs) in their development project. City staff will review the plan and competitive bid and selection process to ensure that required procedures have been followed. City staff will also monitor construction to ensure that MBE/WBEs are participating in the project as indicated in the construction contract.

All work shall be completed by State-licensed contractors which shall have Santa Ana business licenses. All contracts must comply with competitive bidding requirements. All efforts shall be made by the private owner or the Borrower to provide equal opportunity for employment without discrimination as to race, marital status, sex, color, age, religion, national origin, ancestry, physical disability, AIDS, sexual orientation, or any other protected class, in seeking contractors and subcontractors.

IV. PRE-LOAN COMMITMENT

Pre-Loan Commitment

Following the RFP Process, Proposal Review, Determination of Reasonable Costs and Financial Feasibility, and conditional on meeting the other requirements and conditions outlined above, a pre-loan commitment letter may be drafted by the Housing Division, reviewed and approved by the Housing Division Manager, the City Attorney's Office, and the Executive Director of Community Development, before being recommended for approval. The letter shall state the maximum amount of program funds reserved for the project and list all of the additional conditions, documents and steps that must be taken by the Borrower prior to loan closing.

After the pre-loan commitment letter has been drafted, staff will prepare a written staff report recommending a commitment of funds for a proposal and explaining the reasons for the commitment. The recommendation will be made first by the Housing Division to the Community Redevelopment and Housing Commission (CRHC) to issue the commitment of program funds to the project in the form of an award of program funds. If recommended by the CRHC to City Council, a recommendation will then be made by the Housing Division to the City Council and/or Housing Authority for final approval of the commitment of program funds by motion adopted by the affirmative votes of at least two-thirds (2/3) of the members.

If approved by City Council and/or the Housing Authority, a notice of the issuance of the pre-loan commitment shall be posted publicly, and a copy of such notice shall be published in a newspaper of general circulation, no later than 21 days after the commitment is issued.

Upon issuance of a pre-loan commitment letter, the Housing Division shall work with the Developer to secure all of their remaining financing. If the conditions and projections for the project rent schedule or non-City loans changes or is modified after the pre-loan commitment letter is issued, a second underwriting and subsidy layering analysis will be conducted by a real estate advisor.

Conflict of Interest

No person who is an employee, agent, consultant, officer, or elected official or appointed official of the City who exercises or has exercised any function or responsibility regarding activities assisted with Program funds or who is in a position to participate in a decision making process or gain inside information concerning these activities, may obtain a financial interest or benefit from an activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

V. LOAN TERMS AND CLOSING PROCEDURES

Loan Terms

Permanent loans that are not grants shall be due and payable in no more than fifty-five (55) years subject to the terms of the applicable Loan Agreement and recorded Affordability Restrictions. If a developer requests a shorter term loan, the City would be willing to negotiate. However, except for certain HOME funded projects, the Affordability Restrictions shall remain in effect for at least 55 years.

Purchase Option

At the end of the permanent loan term, the City may have the option to take title to the property in accordance with the terms of an option agreement if the owner of the property decides to sell

Interest Rates for Loans

The interest rate shall be set at either:

- (1) The rate established by the Federal Home Loan Mortgage Corporation for the average conventional commitment of a fixed rate, thirty-year (30) mortgage, and shall be compounded annually; or
- (2) When necessary to secure investor equity, interest rates of affordable housing projects that include tax credits or conventional lenders, at 3% simple interest; or
- (3) When the City loan is in a subordinate position to a first trust deed capital advance/loan made under the U.S. Department of Housing and Urban Development (HUD) Section 202 or Section 811 Programs, the interest rate shall not exceed the highest permissible rate on the applicable HUD Section 202 or Section 811 Program mortgages, under authority of Chapter 24 of the Code of Federal Regulations (CFR), Subpart 885.410(g); or
- (4) When required to meet federal subsidy layering guidelines, at the Applicable Federal Rate (that rate established by the Internal Revenue Service pursuant to Section 1274(d)(1) of the Internal Revenue Code).

Loan Payments

Payments on permanent loans shall be made as follows:

- (1) Payments of principal and interest shall be made annually to the City in an amount equal to 50% of project Residual Receipts, if any. Payments shall be applied first to accrued interest, and then to principal.
- (2) The Borrower may elect to prepay the loan prior to the end of the term. However, the Regulatory Agreement or recorded Affordability Covenants shall remain in full force and effect for its term regardless of any prepayment.

- (3) If the Borrower violates the terms of the Regulatory Agreement or recorded Affordability Covenants such that the City declares the loan in default, the entire amount of unpaid principal plus accrued interest at the rate established at the time of closing shall be due based on the terms of the agreement.
- (4) Unless paid in full earlier, the remaining principal balance of the loan and accrued interest shall be due and payable at the end of the term of the Promissory Note. Where necessary to meet requirements of third party investors and with approval of the Housing Division Manager, the City may allow the remaining principal and accrued but unpaid interest to be payable only to the extent that the fair market value of the Project exceeds the principal balance of the existing indebtedness secured by the property.

Security

The loan shall be secured as follows:

- (1) The loan shall be secured by a Deed of Trust and Promissory Note which may be subordinated to Deeds of Trust securing other Federal, State, City loans, or loans from conventional financing institutions used in conjunction with the loan on the same property. The City must approve all requests for subordination.
- (2) The loan shall be further secured by a Regulatory Agreement or recorded Affordability Covenants to assure that Program funds are used to provide long-term affordable rental housing opportunities for low-, very low-, and extremely low-income households, as applicable. The Borrower and the City shall execute the Regulatory Agreement or recorded Affordability Covenants regulating project rents, tenant selection procedures, use of project income, management and maintenance, transfer of property, and permitted forms of ownership and use. The Regulatory Agreement or recorded Affordability Covenants shall be recorded with the Deed of Trust.

Loan Closing Procedures

After the developer has secured all of their remaining non-City financing (e.g. Low-Income Housing Tax Credits), the Housing Division will prepare draft loan documents following the Loan Terms above, including a draft Loan Agreement, Promissory Note, Deed of Trust (or other appropriate security as determined by the Housing Division Manager), and Regulatory Agreement or recorded Covenants, and submit them to the City Attorney's Office for review and approval as to form. Requirements for a Regulatory Agreement or recorded Covenants may be waived in the case of a project which is funded under the HUD Section 202 or Section 811 Program.

After the loan documents have been finalized, a recommendation will be made by the Housing Division to the CRHC to approve the loan documents. If recommended by the CRHC to City Council, a recommendation will then be made by the Housing Division to the City Council and/or Housing Authority for final approval of the loan documents by motion adopted by the affirmative votes of at least two-thirds (2/3) of the members. Funds may be disbursed following execution and recording of the Loan Documents by the Borrower and the City Manager, and compliance with all commitment conditions. Staff shall submit a request for release of funds required for loan closing to the Executive Director of Finance. The Executive Director of Finance may then authorize release of loan funds into an escrow account established for the loan closing with instructions for disbursement.

VI. PROJECT MONITORING AND REPORTING

The Housing Division shall monitor the project during rehabilitation or construction as needed for compliance with any loan documents and applicable City, State and/or Federal regulations. The Housing Division shall request notification of the final inspection and final construction release from the primary lender, and shall review management practices and reporting procedures with the borrower and project management agent at that time for full compliance with Program requirements. A copy of the Notice of Completion for the project shall be submitted to the Housing Division at the time the Notice is recorded.

Borrowers shall be required to certify annually that they have complied with affirmative marketing and tenant selection procedures, and shall submit an annual report to the Housing Division in the form specified by the Division. The Housing Division shall monitor compliance with any Regulatory Agreement or recorded Affordability Covenants, the loan documents, and applicable City, State and/or Federal regulations on an annual basis. Additional details regarding the monitoring process will be included as part of the final Loan Documents.

Fair Housing and Equal Opportunity

Borrower shall post notices stating that a housing project is subject to Fair Housing and Equal Employment Opportunity requirements of 24 CFR 92.350 and 351 at each project site.

Establishment and Use of Reserve Funds

Upon completion of project construction, the borrower will be required to capitalize a reserve fund in an amount determined by the City and make annual contributions to the fund. The reserve fund can be used for expenditures related to necessary structural and equipment replacements and improvements of a capital nature, and is not intended to be used for ordinary maintenance items.

Annual Reporting by the Housing Division

On a quarterly basis, the Housing Division shall prepare a report to the CRHC for its review and recommendation for City Council approval. The quarterly report shall include details on at least the following items:

- (1) Loan Activity;
- (2) Loan Portfolio Management and Monitoring;
- (3) Proposals that were submitted during the previous quarter under the RFP Process but were not recommended for approval by a Review Panel;
- (4) Affordable Housing Projects under Development; and
- (5) Available Funds for Affordable Housing Development Projects.

VII. FUNDING SOURCES

Low and Moderate Income Housing Asset Fund **(Housing Successor Agency Fund)**

Source of Funds

Funding sources for this program are generated from proceeds from the sale of former Redevelopment Agency housing assets, residual receipts from former Redevelopment Agency assets (i.e. loans), as well as a portion of the loan repayments from the former Redevelopment Agency to the City. Sources are set aside for the purpose of increasing, improving and preserving the community's supply of low and moderate income housing as stipulated by California Health and Safety Code Section 34176. (Further information on grant terms provided in Section III).

This fund includes land assets owned by the Housing Authority acting as the Housing Successor Agency that must be developed for affordable housing or sold at or above fair market value to increase the Low and Moderate Income Housing Asset Fund.

Eligible Borrowers/Grantees

Eligible borrowers are nonprofit Housing Development Corporations (HDC's) duly organized to promote and undertake community development activities on a not-for-profit basis, or for-profit housing developers or development corporations, with proven capacities to develop, own, and operate affordable housing. Limited partnerships whose general partners are otherwise eligible under the above are also eligible to borrow Program funds.

Eligible Projects

All new construction projects shall be affordable to households whose income, as adjusted for household size, does not exceed 80% of area median income.

Eligible acquisition and/or rehabilitation projects will:

- (1) have four or more apartments or be congregate housing or mobile home units, except where the Housing Division Manager finds that the project will provide a substantial public benefit;
- (2) be in need of rehabilitation as defined herein;
- (3) be located in the City of Santa Ana;
- (4) be free from significant adverse environmental conditions, except those that can be mitigated at a reasonable cost through rehabilitation; and,
- (5) minimize tenant displacement.

Eligible Uses and Activities

Program funds can be used to make loans or grants to eligible borrowers who will provide affordable housing, principally for low- and moderate-income households. Eligible uses of deferred payment loan funds or grants include, but are not limited to, the following:

- (1) acquisition and/or rehabilitation of eligible properties for rental or transitional housing;

- (2) acquisition and conversion of non-residential property to multifamily rental housing units; and
- (3) new construction of housing units for rental or transitional housing.

Affordability Requirements

As required by State law, all projects shall be targeted to households earning 80% or less of the area median income, based on the State of California Housing and Community Development income and rent limits. State law also requires that at least thirty percent (30%) shall be expended for rental housing affordable to and occupied by “low-income” households does not exceed thirty percent (30%) of the area median income and no more than twenty percent (20%) affordable to and occupied by households between 60% of the area median income and 80% of the area median income.

Units are considered affordable when the rent, less a deduction for a utility allowance, for a “very low-income” household does not exceed thirty percent (30%) of 50% of the area median income; for a “low-income” household does not exceed thirty percent (30%) of 60% of the area median income.

Very low-income households are households whose incomes do not exceed 50% of the area median income. Low-income households are households whose income does not exceed 80% of the area median income. The area median income as referenced above is the Orange County area median income figure, adjusted for household size, as published by the California Department of Housing and Community Development (HCD) from time to time.

Security

The loan or grant shall be secured by a Deed of Trust and Promissory Note which may be subordinated to deeds of trust securing other Federal, State, or City loans, or loans from conventional financing institutions used in conjunction with the Low and Moderate Income Housing Asset Fund loan on the same property. The City must obtain written commitments to protect the City’s investment in the event of a default. The City must approve all requests for subordination.

The loan or grant shall be further secured by recorded Affordability Covenants and Restrictions, running with the land, to assure that Program funds are used to provide long-term affordable rental housing opportunities for low- and moderate-income households. The Borrower and the City shall execute and record Affordability Covenants and Restrictions regulating project rents, tenant selection procedures, use of project income, management and maintenance, transfer of property, and permitted forms of ownership and use, including a prohibition on conversion of the project to condominium or stock cooperative ownership for the term of the recorded Affordability Covenants and Restrictions. The recorded Affordability Covenants and Restrictions shall provide for the longest feasible time. Notwithstanding the above, the Affordability Covenants and Restrictions would in no event, be shorter than any other term of a Regulatory Agreement or Covenant recorded concurrently with the City’s Covenants and Restrictions. The Affordability Covenants and Restrictions shall be recorded with the Deed of Trust.

In some circumstances, these Affordability Covenants and Restrictions may be subordinated by the City, pursuant to Section 33334.14 of California Health and Safety Code, to liens, encumbrances, or regulatory agreements of other federal or state agencies or lenders providing financing for the project, subject to assurances by senior lenders that the City's lien rights will be protected.

Inclusionary Housing Fund

Source of Funds

Funding for this program is provided using revenues generated through in-lieu fees from the City of Santa Ana Housing Opportunity Ordinance (revised and adopted by City Council in October 2015).

Eligible Borrowers/Grantees

Eligible borrowers are nonprofit Housing Development Corporations (HDC's) duly organized to promote and undertake community development activities on a not-for-profit basis, and which have a valid 501(c)(3) or (4) designation from the IRS, or for-profit housing developers or development corporations, with proven capacities to develop, own, and operate affordable housing. Limited partnerships whose general partners are otherwise eligible under the above are also eligible to borrow Program funds.

Eligible Projects

Funds can be used to increase and improve the supply of housing affordable to moderate (120% AMI), low (80% AMI), very-low (50% AMI) and extremely-low income (30% AMI) households in the City.

Eligible rehabilitation projects will:

- (1) be in need of rehabilitation as defined herein;
- (2) be located in the City of Santa Ana;
- (3) be free from significant adverse environmental impacts, except those that can be mitigated through rehabilitation; and
- (4) avoid permanent involuntary tenant displacement to the greatest degree feasible in order to carry out the program.

Eligible projects which involve new construction or conversion of an existing non-residential use will conform to items (2), (3), and (4) above.

Eligible Uses and Activities

Funds can be used to make loans to eligible borrowers to provide affordable housing, for moderate (120% AMI), low (80% AMI), very-low (50% AMI) and extremely-low income (30% AMI) households, including, but not limited to, the following:

1. Acquisition and rehabilitation of eligible rental properties. Existing rental units may be acquired, substantially rehabilitated and then income and affordability covenants can be recorded on the units for rental or ownership.
 - a. Defined as rehabilitation of a dwelling unit that has substantial building and other code violations such that the unit is returned to the City's housing supply as decent, safe and sanitary affordable housing. The housing must comply with all local building and zoning codes and standards, including energy efficiency and water conservation standards, and meet housing quality standards in Section 882 of Title 24.

2. Purchase and rehabilitation of homes with code-related issues for sale to low- and moderate-income buyers;
3. New construction of rental housing units;
4. To pay for one-time programs and activities for code enforcement, quality of life and general health and safety issues that directly relate, enhance, and promote affordable housing projects and activities.
5. Acquisition and conversion of non-residential (e.g. commercial) property to multifamily rental housing units;
6. Homeless services programs;
7. Security deposit assistance programs;
8. Immigrant-focused housing programs, services and activities for non-U.S. citizens;
9. Foreclosure and eviction prevention programs, services and activities.

HOME Investment Partnerships Program

Source of Funds

Funding for this Program is provided through the U.S. Department of Housing and Urban Development (HUD) HOME Program (including program income and residual receipts), and therefore is subject to the federal rules and regulations found in 24 CFR Part 92, as amended from time to time.

Eligible Borrowers/Grantees

Eligible borrowers are nonprofit Housing Development Corporations (HDC's) duly organized to promote and undertake community development activities on a not-for-profit basis, and which have a valid 501(c)(3) or (4) designation from the IRS, or for-profit housing developers or development corporations, with proven capacities to develop, own, and operate affordable housing. Limited partnerships whose general partners are otherwise eligible under the above are also eligible to borrow Program funds.

Eligible Projects

Projects eligible for HOME funding shall:

- (1) be rental projects located in the City of Santa Ana;
- (2) contribute to the achievement of the City's Strategic Plan and fair housing goals;
- (3) involve 4 or more apartments which will be rented to eligible lower income households at rents that do not exceed rents as defined by 24 CFR 92.252, as amended from time to time. Projects serving persons with special needs, or where the City Manager finds that the project will provide a substantial public benefit, may have fewer than four units. Transitional or permanent supportive housing may be provided (but not temporary shelters).
- (4) have at least 20% of the HOME-assisted units rented to very low-income families (50% of median income) under the terms and conditions set forth in 24 CFR 92.252 (2)(b);
- (5) demonstrate financial feasibility -- including the ability to maintain rents for the subsidized units at affordable levels for the periods specified in 24 CFR 92.252;
- (6) be free of significant adverse environmental impacts, except those that can be mitigated through the project itself;
- (7) minimize tenant displacement;
- (8) comply with all local building and zoning codes and standards, including energy efficiency and water conservation standards, and meet housing quality standards in Section 882.109 of Title 24. Newly constructed housing must meet the current edition Model Energy Code of the Council of American Building Officials;
- (9) make efficient use of public funds and avoid "layering" of subsidies beyond those necessary to achieve a financially feasible project; and,
- (10) have at least 51% of the project space be residential, if in a mixed use project.

Eligible Uses and Activities

HOME funds may only be used to finance new construction or acquisition and/or rehabilitation of rental housing which is affordable to very low and low-income households as defined by 24

CFR 92.2. Fifteen percent (15%) of the annual HOME fund allocation shall be set aside for certified Community Housing Development Organizations (CHDO's).

New construction costs eligible for HOME funding shall be as specified in 24 CFR Part 92, including:

1. site acquisition;
2. site preparation costs (grading, filling, etc.);
3. financing costs as described in 24 CFR 92.206;
4. architectural, engineering, and other related soft costs;
5. the cost of extending or upgrading utilities to the site to support the proposed project;
6. construction costs;
7. relocation costs; and,
8. affirmative marketing and audit costs related to HOME program requirements.

Rehabilitation costs eligible for HOME funding include:

9. project acquisition with or without rehabilitation;
10. financing costs, as described in 24 CFR 92.206;
11. architectural, engineering, or other design costs;
12. utility upgrade or extension costs;
13. costs associated with demolition (where necessary) only if rehabilitation is commenced within 12 months of demolition;
14. construction costs;
15. project audit costs; and,
16. affirmative marketing costs.

Ineligible Uses and Activities

The following costs are not eligible for HOME funding:

1. project reserve accounts for replacement or operating reserves, and operating subsidies;
2. payment of impact fees;
3. land banking;
4. emergency repair or weatherization programs;
5. commercial properties;
6. temporary shelters; or
7. project-based rental assistance.

Affordability Requirements

HUD provides the following maximum HOME rent limits. The maximum HOME rents are the lesser of:

1. The fair market rent for existing housing for comparable units in the area as established by HUD; or
2. A rent that does not exceed 30 percent of the adjusted income of a family whose annual income equals 65 percent of the median income for the area, as determined by HUD, with adjustments for number of bedrooms in the unit. The HOME rent limits provided by HUD will include average occupancy per unit and adjusted income assumptions.

In rental projects with five or more HOME-assisted rental units, twenty (20) percent of the HOME-assisted units must be occupied by very low-income families and meet one of following rent requirements:

1. The rent does not exceed 30 percent of the annual income of a family whose income equals 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD provides the HOME rent limits which include average occupancy per unit and adjusted income assumptions. However, if the rent determined under this paragraph is higher than the applicable rent under 24 CFR 92.252(a), then the maximum rent for units under this paragraph is that calculated under 24 CFR 92.252(a).
2. The rent does not exceed 30 percent of the family's adjusted income. If the unit receives Federal or State project-based rental subsidy and the very low-income family pays as a contribution toward rent not more than 30 percent of the family's adjusted income, then the maximum rent (i.e., tenant contribution plus project-based rental subsidy) is the rent allowable under the Federal or State project-based rental subsidy program.

To ensure that HOME investments yield affordable housing over the long term, HOME imposes rent and occupancy requirements over the length of an affordability period. For homebuyer and rental projects, the length of the affordability period depends on the amount of HOME assistance to the project or buyer, and the nature of the activity funded.

Table 1-1: Determining the HOME Period of Affordability:

HOME Assistance per Unit or Buyer	Length of the Affordability Period
Less than \$15,000	5 years
\$15,000 - \$40,000	10 years
More than \$40,000	15 years
New construction of rental housing	20 years
Refinancing of rental housing	15 years

Throughout the affordability period, income-eligible households must occupy the HOME-assisted housing. When units become vacant during the affordability period, subsequent tenants must be income eligible and must be charged the applicable HOME rent.

Other Requirements

Minimum Loan: All HOME investments must total not less than \$1,000 multiplied by the number of HOME-assisted units in the project.

Maximum Loan: The maximum amount of subsidy per unit shall not exceed the maximum allowed by HUD under the HOME program (24 CFR 92.250), or that provided for under Section IV, Loan Terms, of these Policies and Procedures, whichever is less. The City will avoid unnecessary layering of subsidies from different federal, state and local programs and seek to maximize the benefit to target households from the investment of HOME funds in a project. The Housing Division will use HUD's Cost Allocation Tool to identify the maximum subsidy per unit for each project.

Property Standards: Housing that is assisted with HOME funds must meet, at a minimum, the City's Property Standards, including all applicable local, State and Federal codes and regulations. Newly constructed housing must also meet the current edition of the Model Energy Code published by the Council of American Building Officials. Substantially rehabilitated housing must meet the cost-effective energy conservation and effectiveness standards in 24 CFR 39.

Labor Standards/Construction Contracts: Any contract for construction (whether it is for rehabilitation or for new construction) of affordable housing with **12 or more units** assisted with HOME funds must contain a provision requiring that not less than the prevailing wages paid in the locality, as determined by the Secretary of Labor pursuant to the Davis-Bacon Act, will be paid to all laborers and mechanics employed in the development of the project. Contractors and subcontractors must comply with regulations issued under this Act and pertaining to labor standards and HUD Handbook 1344.1. These provisions apply whether HOME funds are used for construction or non-construction costs.

Lead-based Paint: Housing assisted with HOME funds constitutes HUD-associated housing for the purpose of the Lead-Based Paint Poisoning Prevention Act and the Lead Safe Housing Rule, and is therefore subject to 24 CFR Part 35. Unless otherwise provided, borrowers are responsible for testing and abatement.

Community Development Block Grant Program

Source of Funds

Funding for this program is provided through the U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) program (including program income and residual receipts), and therefore is subject to the federal rules and regulations found in 24 CFR Part 570, as amended from time to time.

Eligible Borrowers/Grantees

Eligible borrowers are community-based nonprofit housing development corporations (CBDO's) duly organized or with capacity to promote and undertake community development activities on a not-for-profit basis, with proven capacity to develop, own and operate affordable housing, within a neighborhood identified in the Community Development plan (Annual Action Plan). Such organizations are defined in CDBG regulations (24 CFR 570.204(a)(2)(c)(1)). Nonprofit Housing Development Corporations (HDC's) and social service agencies with proven capacity to develop, own, and operate affordable housing, and limited partnerships whose general partner(s) is otherwise eligible under the above provisions, are also eligible to borrow Program funds if the nonprofit partner is the managing general partner throughout the term of the loan and will receive at least 51% of the developer fee. Nonprofit corporations must have a valid 501(c)(3) or (4) designation from the Internal Revenue Service.

Eligible Projects

Eligible projects will: (1) have four or more apartment units or fewer than four units in the case of congregate housing, mobile home units or where the Housing Division Manager finds that the project will provide a substantial public benefit; (2) if new construction, have 51% of the units occupied by low income tenants; (3) be free from significant adverse environmental impacts, except those that can be mitigated; and, (4) avoid permanent involuntary tenant displacement to the greatest degree feasible in order to carry out the program. Transitional or permanent supportive housing may be provided. Rents of assisted units shall be affordable to households whose incomes do not exceed 80% of the area median income.

Eligible Uses and Activities

Funds can be used to make loans to eligible borrowers to provide affordable housing, principally for low and moderate income households, including, but not limited to:

- (1) acquisition and/or rehabilitation of eligible rental properties;
- (2) new construction of rental or limited equity cooperative housing by a CBDO is eligible, provided the construction activity is carried out as part of a neighborhood revitalization, community economic development or energy conservation project. New housing construction carried out by an eligible CBDO must be part of a larger effort to revitalize the neighborhood (i.e., a plan for the community's revitalization efforts based on a comprehensive plan, not just for the sake of the CDBG project);

Ineligible Uses and Activities

Funds may not be used for the following activities:

1. the construction of new rental housing or for any program to subsidize or assist such housing, except when carried out by a CBDO, provided the construction activity is carried out as part of a neighborhood revitalization, community economic development or energy conservation project;
2. to provide income payments for rent or utilities, except in emergency situations for a period not longer than three months; or,
3. to assist rental housing properties if less than 51% of the units will be occupied by low and moderate income households.

Compliance with Federal and Local Regulations

All projects must comply with all applicable federal requirements contained in 24 CFR Part 570 Subpart K, including, but not limited to, standards of financial management, environmental review, labor and wage requirements, debarred contractors, lead-based paint and equal opportunity. Borrowers should note:

Contract Requirements: All work shall be completed by licensed contractors. All contracts must comply with competitive bidding requirements.

Labor Standards: A project with **eight or more residential units** must comply with the Federal Labor Standards, including the Davis-Bacon Act requirements, as promulgated by HUD, and set forth in 24 CFR Part 570, Subpart K in the performance of the rehabilitation or construction work financed by the loan. Contracts over \$10,000 must comply with Equal Opportunity Affirmative Action requirements of Section 3 of the Housing Urban Development Act of 1968. All efforts shall be made to provide equal opportunity for employment without discrimination as to race, marital status, sex, color, age, religion, national origin or ancestry, and to seek out qualified local tradespeople for contracting and subcontracting bids.

Lead-based Paint: Housing assisted with CDBG funds constitutes HUD-associated housing for the purpose of the Lead-Based Paint Poisoning Prevention Act and the Lead Safe Housing Rule, and is therefore subject to 24 CFR Part 35. Unless otherwise provided, borrowers are responsible for testing and abatement.

Accessibility: All projects must comply with the federal Section 504 Disabled Accessibility regulations contained in Sections 8.22 and 8.23 of Subpart C, 24 CFR Part 8.

Project-Based Voucher Program

Source of Funds

Project-based vouchers are a component of a public housing authority's (PHA) Housing Choice Voucher Program. Funding for project-based vouchers comes from funds already obligated by the U.S. Department of Housing and Urban Development to a PHA under its Annual Contributions Contract. A PHA can attach up to 20 percent of its Annual Contributions Contract to specific housing units if the owner agrees to either rehabilitate or construct the units, or the owner agrees to set-aside a portion of the units in an existing development. The PHA can use up to 20 percent of its housing choice vouchers for project-based vouchers.

Eligible Borrowers

Eligible borrowers are nonprofit Housing Development Corporations (HDC's) duly organized to promote and undertake community development activities on a not-for-profit basis, or for-profit housing developers or development corporations, with proven capacities to develop, own, and operate affordable housing. Limited partnerships whose general partners are otherwise eligible under the above are also eligible to borrow Program funds.

Eligible Projects

Eligible projects include acquisition, rehabilitation, or new construction of rental housing projects which:

1. The PHA may attach PBV assistance for units in existing housing or for newly constructed or rehabilitated housing developed under and in accordance with an Agreement.
 - a. *Existing housing*—A housing unit is considered an existing unit for purposes of the PBV program, if at the time of notice of PHA selection the units substantially comply with HQS.
 - i. Units for which rehabilitation or new construction began after owner's proposal submission but prior to execution of the Agreement to Enter into a Housing Assistance Payments Contract do not subsequently qualify as existing housing.
 - ii. Units that were newly constructed or rehabilitated in violation of program requirements also do not qualify as existing housing.

Eligible Uses and Activities

Program funds can be used to enter into an Agreement with eligible borrowers who will provide affordable housing, principally for low and moderate income households. Eligible uses of Project-Based Voucher funds include, but are not limited to, the following:

- (1) acquisition and/or rehabilitation of eligible rental properties;
- (2) acquisition and conversion of nonresidential property to multifamily rental housing units; and
- (3) new construction of rental housing units.

Affordability Requirements

All units assisted under this program shall be affordable to households with incomes that do not exceed 30% of median income.

Compliance with Federal and Local Regulations

All projects must comply with all applicable federal requirements contained in 24 CFR 982, including, but not limited to, environmental review, labor and wage requirements, debarred contractors, lead-based paint and equal opportunity. Borrowers should note:

Contract Requirements: All work shall be completed by licensed contractors. All contracts must comply with competitive bidding requirements.

Labor Standards: A project with **nine or more residential units** must comply with the Federal Labor Standards, including the Davis-Bacon Act requirements, as promulgated by HUD, and set forth in 24 CFR Part 570, Subpart K in the performance of the rehabilitation or construction work financed by the loan. Contracts over \$10,000 must comply with Equal Opportunity Affirmative Action requirements of Section 3 of the Housing Urban Development Act of 1968. All efforts shall be made to provide equal opportunity for employment without discrimination as to race, marital status, sex, color, age, religion, national origin or ancestry, and to seek out qualified local tradespeople for contracting and subcontracting bids.

Lead-based Paint: Housing assisted with PBV funds constitutes HUD-associated housing for the purpose of the Lead-Based Paint Poisoning Prevention Act and the Lead Safe Housing Rule, and is therefore subject to 24 CFR Part 35. Unless otherwise provided, borrowers are responsible for testing and abatement.

Accessibility: All projects must comply with the federal Section 504 Disabled Accessibility regulations contained in Sections 8.22 and 8.23 of Subpart C, 24 CFR Part 8.